

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 1331
HOUSE BILL 1076

AN ACT TO ESTABLISH PROCEDURES FOR THE CONDUCT OF PROCEEDINGS
BEFORE ADMINISTRATIVE AGENCIES AND TO ESTABLISH A CODE OF
ADMINISTRATIVE REGULATIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 150 of the General Statutes is hereby rewritten to read as follows:

"Chapter 150.

"Administrative Procedure Act.

"Article 1.

"General Provisions.

"§ 150-1. Scope and policy. — (a) This Chapter shall apply except to the extent and in the particulars that any statute makes specific provisions to the contrary. The following are specifically exempted from the provisions of this Chapter: the Employment Security Commission; the Industrial Commission; the Occupational Safety and Health Review Board; and the Utilities Commission. However, Articles 2 and 3 of this Chapter shall not apply to the Department of Motor Vehicles or the Department of Revenue.

(b) The purpose and intent of this Chapter shall be to establish as nearly as possible a uniform system of administrative procedure for State agencies.

"§ 150-2. Definitions. — As used in this Chapter,

- (1) 'Agency' means every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina but does not include those agencies in the legislative or judicial branches of the State government; and does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, or county or city boards of education, other local public districts, units or bodies of any kind, or private corporations created by act of the General Assembly.
- (2) 'Contested case' is any agency proceeding, by whatever name called, wherein the legal rights, duties or privileges of specific parties are to be determined. Contested cases include, but are not limited to, proceedings involving rate making, price fixing and licensing. Contested cases shall not be deemed to include rule making and declaratory rulings.
- (3) 'License' means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in a trade, occupation, or other activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes.
- (4) 'Licensing' means any administrative action issuing, failing to issue, suspending or revoking a license.
- (5) 'Party' means each person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the

hearing agency where appropriate; provided, this shall not be construed to permit the hearing agency or any of its officers or employees to appeal its own decision for initial judicial review.

- (6) 'Person aggrieved' means any person, firm, corporation, or group of persons of common interest who are directly or indirectly affected substantially in their person, property, or public office or employment by an agency decision.
- (7) 'Person' means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.
- (8) 'Residence' means domicile or principal place of business.

"§ 150-3. Special provisions on licensing. — (a) When a licensee makes timely and sufficient application for renewal of a license or a new license (including the payment of any required license fee) with reference to activity of a continuing nature, the existing license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license are limited, until the last day for applying for judicial review of the agency order. This subsection does not affect agency action summarily suspending such license under subsections (b) and (c) of this section.

(b) Before the commencement of proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license, an agency shall give notice to the licensee, pursuant to the provisions of G.S. 150-21(c), of alleged facts or alleged conduct which warrant the intended action. The licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last-known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to the effective date of this Chapter, which provide for the summary suspension of a license.

§ 150-4 through § 150-10 (reserved for future codification purposes).

"Article 2.

"Rule Making.

"§ 150-11. Minimum procedural requirements. — It is the intent of this Article to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. Except for emergency rules which are provided for in G.S. 150-15, the provisions of this Article are applicable to the exercise of any rule-making authority conferred by any statute, but nothing in this Article repeals or diminishes additional requirements imposed by law or any summary power granted by law to the State or any agency thereof. No rule hereafter adopted is valid unless adopted in substantial compliance with this Article.

"§ 150-12. Definition. — As used in this Article, 'rule' means each agency regulation, standard or statement of general applicability that implements or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include the following:

- (1) Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;
- (2) Declaratory rulings issued pursuant to G.S. 150-19;
- (3) Intra-agency memoranda, except those to agency staff which implement or prescribe law or policy;

- (4) Statements of policy or interpretations that are made in the decision of a contested case;
- (5) Rules concerning the use or creation of public roads or facilities which are communicated to the public by use of signs or symbols;
- (6) Interpretative rules and general statements of policy of the agency.

"§ 150-13. Special requirements. — In addition to other rule-making requirements imposed by law, each agency shall:

- (1) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.
- (2) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions.
- (3) With respect to all final orders, decisions, and opinions made after the effective date of this Article, make available for public inspection together with all materials that were before the deciding officers at the time the final order, decision, or opinion was made, except materials properly for good cause held confidential.

"§ 150-14. Procedure for adoption of rules. — (a) Before the adoption, amendment or repeal of a rule, an agency shall give notice of a public hearing and offer any person an opportunity to present data, views, and arguments. The notice shall be given within the time prescribed by any applicable statute, or if none then at least 10 days before the public hearing and at least 20 days before the adoption, amendment, or repeal of the rule. The notice shall include:

- (1) A reference to the statutory authority under which the action is proposed.
- (2) The time and place of the public hearing and a statement of the manner in which data, views, and arguments may be submitted to the agency either at the hearing or at other times by any person.
- (3) A statement of the terms or substance of the proposed rule or a description of the subjects and issues involved, and the proposed effective date of the rule.

(b) The agency shall transmit copies of the notice to the Attorney General and all persons who have requested the agency in writing for advance notice of proposed action which may affect them. The notices shall be in writing and shall be forwarded by mail or otherwise to the last address specified by the person.

(c) The agency shall publish the notice as prescribed in any applicable statute or, if none, shall publish the notice in a manner selected by the agency as best calculated to give notice to persons likely to be affected by the proposed rule.

Methods that may be employed by the agency, depending upon the circumstances, include publication of the notice in one or more newspapers of general circulation or, when appropriate, in trade, industry, governmental or professional publications. If the persons likely to be affected by the proposed rule are unorganized or diffuse in character and location, then the agency shall publish the notice as a display advertisement in at least three newspapers of general circulation in different parts of the State.

(d) The public hearing shall comply with any applicable statute but is not subject to the provisions of this Chapter governing contested cases, unless a rule is required by law to be adopted pursuant to adjudicatory procedures.

(e) The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the consideration urged against its adoption.

"§ 150-15. **Emergency rules.** — If any agency finds that an imminent peril to the public health, safety, or welfare requires adoption, amendment, or repeal of a rule, without notice or upon fewer than 20 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. This rule may be effective for a period of not longer than 120 days but the adoption of an identical rule under G.S. 150-14 is not precluded.

"§ 150-16. **Adoption by reference.** — An agency may adopt, by reference in its rules and without publishing the adopted matter in full, all or any part of a code, standard or regulation which has been adopted by an agency of this State or of the United States or by a generally recognized organization or association. The reference shall fully identify the adopted matter by date and otherwise. The reference shall not cover any later amendments and editions of the adopted matter, but if the agency wishes to incorporate them in its rule, it shall amend the rule or promulgate a new rule therefor. The agency shall have available copies of the adopted matter for inspection and the rules shall state where copies of the adopted matter can be obtained and any charge therefor as of the time the rule is adopted.

"§ 150-17. **Continuation of rules.** — When a law authorizing or directing an agency to promulgate rules is repealed and substantially the same rule-making power or duty is vested in the same or a successor agency by a new provision of law or the function of the agency to which the rules are related is transferred to another agency, by law or executive order, the existing rules of the original agency relating thereto continue in effect until amended or repealed, and the agency or successor agency may repeal any rule relating to the function. When a law creating an agency or authorizing or directing it to promulgate rules is repealed or the agency is abolished and substantially the same rule-making power or duty is not vested in the same or a successor agency by a new provision of law and the function of the agency to which the rules are related is not transferred to another agency, the existing applicable rules of the original agency are automatically repealed as of the effective date of the repeal of such law or the abolition of the agency.

"§ 150-18. **Petition for adoption of rules.** — Any person may petition an agency requesting the promulgation, amendment, or repeal of a rule, and may accompany his petition with such data, views, and arguments as he thinks pertinent. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 30 days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with G.S. 150-14 and G.S. 150-15. Denial of the petition to initiate rule making under this section shall be considered a final agency decision for purposes of judicial review, which shall be limited to questions of abuse of discretion.

"§ 150-19. **Declaratory rulings.** — On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this subsection prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

§ 150-20. (Reserved for future codification purposes).

"Article 3.

"Administrative Hearings.

"§ 150-21. Hearing required; notice; intervention. — (a) The parties in a contested case shall be given an opportunity for a hearing without undue delay.

(b) The parties shall be given a reasonable notice of the hearing, which notice shall include:

- (1) A statement of the date, hour, place, and nature of the hearing;
- (2) A reference to the particular sections of the statutes and rules involved; and
- (3) A short and plain statement of the factual allegations.

(c) Notice shall be given personally or by registered mail. If given by registered mail, it shall be deemed to have been given on the date appearing on the return receipt. If giving of notice cannot be accomplished either personally or by registered mail, notice shall then be given as provided in G.S. 1A-1, Rule 4(j).

(d) Any person may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24. In addition, any person interested in an agency proceeding may intervene and participate in that proceeding to the extent deemed appropriate by the hearing agency.

(e) All hearings under this Chapter shall be open to the public.

"§ 150-22. Venue of hearing. — When a hearing on a contested case is conducted by a hearing officer or less than a majority of an agency, the hearing shall be conducted in a county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence.

If the hearing is conducted by a majority of the agency, then the hearing shall be held in the county where the agency maintains its principal office.

When a different county would promote the ends of justice or better serve the convenience of witnesses, the agency hearing the case may in its discretion designate another county. In any case, however, the person whose property or rights are involved and the agency hearing the case may agree that the hearing is to be held in some other county.

The person whose property or rights are the subject matter of the hearing shall not be deemed to have waived any objection to venue merely by proceeding in the hearing.

"§ 150-23. Conduct of hearing, answer. — (a) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

(b) A party who has been served with a notice of hearing may file a written answer before the date set for hearing.

(c) The parties shall be given an opportunity to present arguments on issues of law and policy and an opportunity to present evidence on issues of fact.

(d) A party may cross-examine any witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. A party may submit rebuttal evidence.

"§ 150-24. Consolidation. — When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before an agency, the agency may order a joint hearing of any or all of the matters in issue in the cases, may order all of the cases consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

"§ 150-25. Subpoena. — An agency is hereby authorized to issue subpoenas upon its own motion or upon a written request. When such written request is made by a party in a contested case, an agency shall issue subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. On written request, the agency shall revoke a subpoena if, upon a hearing the agency finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other

reason sufficient in law the subpoena is invalid. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314.

"§ 150-26. **Depositions and discovery.** — (a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. An agency authorized to adjudicate contested cases may adopt rules providing for discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) On a request for identifiable agency records, with respect to material facts involved in a contested case, except records related solely to the internal procedures of the agency or which are exempt from disclosure by law, an agency shall make such records promptly available to a party.

"§ 150-27. **Rules of evidence.** — (a) In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the Trial Division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the agency in reaching its decision, or by the court on judicial review.

(b) Evidence in a contested case, including records and documents, shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under G.S. 150-28. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

"§ 150-28. **Official notice.** — Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. An agency may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it.

"§ 150-29. **Stipulations.** — (a) The parties in a contested case by a stipulation in writing filed with the agency may agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable.

(b) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties.

"§ 150-30. **Designation of hearing officer.** — (a) An agency, one or more members of the agency, a person or group of persons designated by statute or one or more hearing officers designated and authorized by the agency to handle contested cases, shall be hearing officers in contested cases. Hearings shall be conducted in an impartial manner.

(b) On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a hearing officer, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When a hearing officer is disqualified or it is impracticable for him to continue the hearing, another hearing officer shall be assigned to continue with the case unless it is shown that substantial prejudice to any party will result therefrom, in which event a new hearing shall be held or the case dismissed without prejudice.

"§ 150-31. **Powers of hearing officer.** — A hearing officer may:

- (1) Administer oaths and affirmations;

- (2) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;
- (3) Provide for the taking of testimony by deposition;
- (4) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;
- (5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties; and
- (6) Apply to the General Court of Justice, Superior Court Division, during or subsequent to a hearing for an order to show cause why any person should not be held in contempt of the agency and its processes, and the Court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.

"§ 150-32. Proposal for decision. — (a) When the official or a majority of the officials of the agency who are to make a final decision have not heard a contested case, the decision shall not be made until a proposal for decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the officials who are to make the decision.

(b) The proposal for decision shall contain proposed findings of fact and proposed conclusions of law. This proposal for decision shall be prepared by a person who conducted the hearing unless he becomes unavailable to the agency.

If no such person is available, the findings may be prepared by one who has read the record, unless demeanor of witnesses is a factor. If demeanor is a factor, the portions of the hearing involving demeanor shall be held again, or the case shall be dismissed without prejudice.

(c) The parties, by written stipulation or at the hearing, may waive compliance with this section.

"§ 150-33. No ex parte communication; exceptions. — Unless required for disposition of an ex parte matter authorized by law, a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party or his representative, nor, in connection with any issue of law, with any party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually related case. This section does not apply to an agency employee, or party representative with professional training in accounting, actuarial science, economics, financial analysis, or rate making in a contested case insofar as the case involves rate making or financial practices or conditions.

"§ 150-34. Final agency decision. — A final decision or order of an agency in a contested case shall be made, after review of the official record as defined in G.S. 150-35(a), in writing and shall include findings of fact and conclusions of law.

Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150-27(a) or G.S. 150-28 or G.S. 150-29. A copy of the decision or order shall be served upon each party personally or by registered mail and a copy furnished to his attorney of record.

"§ 150-35. **Official record.** — (a) An agency shall prepare an official record of a hearing which shall include:

- (1) Notices, pleadings, motions, and intermediate rulings;
- (2) Questions and offers of proof, objections, and rulings thereon;
- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
- (5) Proposed findings and exceptions; and
- (6) Any decision, opinion, order, or report by the officer presiding at the hearing and by the agency.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests.

§ 150-36 through § 150-40 (Reserved for future codification purposes).

"Article 4.

"Judicial Review.

"§ 150-41. **Right to judicial review.** — Any person who is aggrieved by a final agency decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of such decision under this Article, unless adequate procedure for judicial review is provided by some other statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article.

"§ 150-42. **Right to judicial intervention when agency unreasonably delays decision.** — Unreasonable delay on the part of any agency in reaching a final decision shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency.

"§ 150-43. **Manner of seeking review, time for filing petition; waiver.** — In order to obtain judicial review of a final agency decision under this Chapter, the person seeking review must file a petition in the Superior Court of Wake County; except that where the original determination in the matter was made by a local agency or local board and appealed to the State Board, the petition may be filed in the superior court of the county where the original determination was made. Such petition may be filed at any time after final decision, but must be filed not later than 30 days after a written copy of the decision is served upon the person seeking the review by personal service or by registered mail. Failure to file such petition within the time stated shall operate as a waiver of the right of such person to review under this Chapter, except that for good cause shown, the judge of the superior court may issue an order permitting a review of the agency decision under this Chapter notwithstanding such waiver.

"§ 150-44. **Contents of petition; copies served on all parties; intervention.** — The petition shall explicitly state what exceptions are taken to the decision or procedure of the agency and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking the review shall serve copies of the petition by personal service or by registered mail upon the agency which rendered the decision, and upon all who were parties of record to the agency proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the agency proceeding may become a party to the review proceedings by notifying the court within 10 days after receipt of the copy of the petition.

Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

"§ 150-45. **Record filed by agency with clerk of superior court; contents of record; costs.** — Within 30 days after receipt of the copy of the petition for review, or within such additional

time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings.

Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

"§ 150-46. **Stay of board order.** — At any time before or during the review proceeding, the person aggrieved may apply to the reviewing court for an order staying the operation of the agency decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65.

"§ 150-47. **Procedure for taking newly discovered evidence.** — At any time after petition for review has been filed, application may be made to the reviewing court for leave to present additional evidence. If the court is satisfied that the evidence is material to the issues, that it is not merely cumulative, and that it could not reasonably have been presented at the hearing before the agency, the court may remand the case to the agency where additional evidence shall be taken. The agency may then affirm or modify its findings of fact and its decision, and shall file with the reviewing court as a part of the record the additional evidence, together with the affirmation, or any modifications, of its findings or decision.

"§ 150-48. **Review by court without jury on the record.** — The review of agency decisions under this Chapter shall be conducted by the court without a jury. The court shall hear oral arguments and receive written briefs, but shall take no evidence not offered at the hearing; except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken by the court; and except that where no record was made of the administrative proceeding or the record is inadequate, the judge in his discretion may hear all or part of the matter de novo.

"§ 150-49. **Scope of review; power of court in disposing of case.** — The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the agency findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Unsupported by substantial evidence admissible under G.S. 150-27(a) or G.S. 150-28 in view of the entire record as submitted; or
- (6) Arbitrary or capricious.

If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become a part of the record, the reasons for such reversal or modification.

"§ 150-50. **Appeal to Appellate Division; obtaining stay of court's decision.** — Any party to the review proceedings, including the agency, may appeal to the Appellate Division from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay of its final determination, or a stay of the agency decision, whichever shall be appropriate, pending the outcome of the appeal to the Appellate Division.

"Article 5.

"Publication of Administrative Rules.

"§ 150-51. **Short title and definition.** — (a) This Article may be cited as 'The Registration of State Administrative Rules Act.'

(b) As used in this Article, 'rule' means every rule, regulation, ordinance, standard, and amendment thereto adopted by any agency and shall include rules and regulations regarding substantive matters, standards for products, procedural rules for complying with statutory or regulatory authority or requirements and executive orders of the Governor.

'Rule' shall not include:

- (1) Rules, procedures, or regulations which relate only to the internal management of any agency;
- (2) Directives or advisory opinions to any specifically named person or group with no general applicability throughout the State;
- (3) Dispositions of any specific issue or matter by the process of adjudication; and
- (4) Orders establishing or fixing rates or tariffs.

"§ 150-52. Filing of rules. — (a) Rules adopted by any agency on or after July 1, 1975, shall be filed with the Attorney General. All rules shall become effective 30 days after filing, unless the agency shall certify the existence of good cause for, and shall specify, an earlier or later effective date. The certification shall state the agency's finding and reasons. An earlier effective date shall not precede the date of filing.

(b) The acceptance for filing of a rule by the Attorney General, by his notation on the face thereof, shall constitute prima facie evidence of compliance with this Article.

(c) Rules previously in existence shall be ineffective after June 30, 1975, except that they shall immediately become effective upon filing in accordance with the provisions of this Article.

"§ 150-52.1. Form of rules. — In order to be acceptable for filing, the rule must:

- (1) Cite the statute or other authority pursuant to which the rule is adopted;
- (2) Bear a certification by the agency of its adoption;
- (3) Cite any prior rule or rules of the agency or its predecessor in authority which it rescinds, amends, supersedes, or supplements; and
- (4) Be in the physical form specified by the Attorney General.

"§ 150-52.2. Authority of Attorney General to revise form. — The Attorney General shall have the authority, following acceptance of a rule for filing, to revise the form of the rule as follows:

- (1) To rearrange the order of rules, chapters, subchapters, articles, sections, paragraphs, and other divisions or subdivisions;
- (2) To provide or revise titles or catchlines;
- (3) To reletter or renumber the rules and various subdivisions in accordance with a uniform system;
- (4) To rearrange definitions and lists; and
- (5) To make other changes in arrangement or in form that in the opinion of the Attorney General do not alter the substance of the rule and that the Attorney General determines are necessary or desirable for an accurate, clear, and orderly arrangement of rules.

Revision of form by the Attorney General shall not alter the effective date of a rule, nor shall revision require the agency to readopt or to refile the rule.

The rule so revised as to form shall be substituted for and shall bear the date of the rule originally filed, and shall be the official rule of the agency.

"§ 150-53. Public inspection and notification of current and replaced rules. —(a) Immediately upon notation of a filing as specified in G.S. 150-52(b), the Attorney General shall make the rule available for public inspection during regular office hours. Superseded, amended, revised, and rescinded rules filed in accordance with the provisions of this Article shall remain available for public inspection. The current and the prior rules so filed shall be separately arranged in compliance with the provisions of G.S. 150-52.2.

(b) The Attorney General shall make copies of current and prior rules, filed in accordance with the provisions of this Article, available to the public at a cost to be determined by him.

(c) Within 25 days of the acceptance by the Attorney General of a rule for filing, the agency filing the rule:

- (1) Shall publish the rule as prescribed in any applicable statute; and
- (2) May distribute the rule in a manner selected by the agency as best calculated to give notice to persons likely to be affected by the rule.

The rule so published or distributed shall contain the legend: 'The form of this rule may be revised by the Attorney General pursuant to the provisions of G.S. 150-52.2.'

(d) The Attorney General is authorized to prepare and distribute summaries of rules filed pursuant to this Article in a manner selected by him as best calculated to give notice to the public.

"§ 150-54. Publication of rules. — (a) The Attorney General shall compile, index, and publish all rules filed and effective pursuant to the provisions of this Article.

(b) As nearly as practicable the compilation shall, in classification, arrangement, numbering, and indexing, conform to the organization of the General Statutes.

(c) If the Attorney General determines that publication of any rule would be impracticable, he shall substitute a summary with specific reference to the official rule on file in his office.

(d) As soon as practicable after July 1, 1975, the Attorney General shall publish a compilation of all rules in force pursuant to the provisions of this Article. Cumulative supplements shall be published annually, or more frequently in the discretion of the Attorney General. Recompilations shall be made in the discretion of the Attorney General.

"§ 150-54.1. Judicial and official notice. — The courts and administrative agencies shall take judicial or official notice, respectively, of any rule effective under this Article."

Sec. 2. G.S. 143-317, G.S. 143-318, and Articles 18 and 33 of Chapter 143 of the General Statutes, are hereby repealed.

Sec. 3. All references in the General Statutes to a section of Chapter 150 of the General Statutes not contained in this act and all references in the General Statutes to Article 18 of Chapter 143 or any of the sections contained therein (143-195 - 143-198.1) or to Article 33 of Chapter 143 or any of the sections contained therein (143-306 - 143-316) are hereby amended to read "Chapter 150 of the General Statutes".

Sec. 4. This act shall be effective on and after July 1, 1975, but shall not affect any pending administrative hearings.

In the General Assembly read three times and ratified, this the 12th day of April, 1974.